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Decision

Matter of: Alsalam Aircraft Company

File: B-401298.4

Date: January 8, 2010

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DIGEST

Protest challenging the reevaluation--after corrective action in response to an earlier protest--of an awardee's proposed transition approach is denied where the agency reasonably concluded that the approach could be achieved within the time required by the solicitation, even though the approach was inconsistent with solicitation guidance indicating that such an approach would not likely be successful; protester cannot claim to have been prejudiced by the agency's revised views about the solicitation guidance because there is no reason to think, based on the record, that the protester would have offered a different approach had it known of the agency's revised views.

DECISION

Alsalam Aircraft Company of Riyadh, Saudi Arabia, protests the award of a contract to DynCorp International LLC by the Department of the Army under solicitation No. W58RGZ-08-R-0107 for support services for the Saudi government, Royal Saudi Land Forces Aviation Command (RSLFAC). Alsalam argues that the Army's evaluation of DynCorp's transition plan and proposed costs were flawed.

We deny the protest.

BACKGROUND

The RFP was issued on July 1, 2008, and sought proposals to provide aircraft operations support services for the RSLFAC, including maintenance, training, and other services. The procurement was conducted under the Foreign Military Sales program, which is authorized by the Arms Export Control Act. 22 U.S.C. § 2751 et seq. (2006). The RFP anticipated award of a contract with fixed-price and cost-reimbursement contract line item numbers (CLINs), with a 2-year base period and three 1-year options. The statement of work (SOW) stated that the contractor will be required to provide support for the RSLFAC, primarily by providing and managing qualified personnel, called direct manning augmentees (DMAs), who will perform the support work, as directed by the RSLFAC. RFP, SOW § 4.2. The RFP specified the monthly base salaries for the DMAs, and instructed offerors to use an annual escalation rate of 4% to calculate the costs for these individuals for the option years. RFP attach. 2, at 4-6.

The RFP stated that proposals would be evaluated on the basis of three factors: past performance, technical, and price (which, as discussed above, contains both fixed-price and cost-reimbursement CLINs). RFP § 1.0. The technical evaluation factor had three subfactors, listed in decreasing order of importance: technical performance, management, and transition. Id. § M-4.1.2.1.a. The RFP advised that the past performance factor was “slightly more important” than the technical factor, and that these factors, both individually and combined, were more important than price. RFP § M.4.1.1.

As relevant here, the transition subfactor required offerors to submit a “detailed transition plan with milestones,” and stated that the agency would evaluate “the soundness of the proposed approach and the ability of the offeror to provide high quality transition, teaming and subcontracting in accordance with the SOW.” Id. §§ L-20.2.2.4(a), M-4.2.0. The RFP required the contractor to complete a transition phase-in within 60 days of contract award. RFP § B, CLIN 0012AA.

The RFP also stated that the contractor would be required to obtain Saudi work permits, known as “igamas,” for the DMAs during the transition phase-in period. The parties have represented, without dispute, that under Saudi law, igamas must be obtained by an employer for a worker; that is, a worker must have an igama that is associated with a particular employer. As relevant here, the solicitation advised offerors—using a question and answer (Q&A) format—that, based on the agency’s experience, a contractor that is not registered to do business in Saudi Arabia would require more time than the 60-day phase-in period in order to become registered and be authorized to obtain the necessary igamas for its workers. Specifically, the solicitation stated:

QUESTION 44. Will the incumbent workforce’s visa roll over to the new contractor during the transition period?

ANSWER 44: No. The incumbent contractor is required to work with [] any new contractor in rolling over the employees from their Igamas (Work Visas) to the new employer's Igamas (work visas), in most cases this rollover cost of the visa rollover is around 2,000SR but that will depend upon how many rollovers the DMA has had in the past, and it is up to the Saudi Labor Department and the new Contractor. The new contractor must have the ability to obtain Igamas for the work force within the transition period, or they will not be able to live up to the requirements. Past experience from new contractors that are not now established with the in-Kingdom Labor Department to obtain work visas (Igamas) indicates it take[s] a very long period of time to get established--up to 6 to 8 months. Most new contractors have to subcontract, or team, with in-Kingdom contractors who already have the ability.

RFP attach. 14, Q&A No. 44 (emphasis added).

The agency received two proposals, from Alsalam and DynCorp, by the closing date of September 5, 2008. As relevant here, DynCorp's proposal stated that the company was not registered to do business in Saudi Arabia, but would complete the required registration and also transfer or obtain all necessary igamas within the 60-day transition period. AR, Tab 17.1.2, DynCorp Proposal, Vol. II, at 14, 98-99. Alsalam, the incumbent contractor, did not propose any costs for transition and stated that "the transition will have little or no impact due to fact that all resources and experienced personnel are currently in place." AR, Tab 16.2, Alsalam Proposal, Vol. II, at 41; Tab 16.3, Alsalam Proposal, Vol. III, CLIN 0012AA. The Army rated DynCorp's proposal under the transition subfactor as "above average," and Alsalam's proposal as "marginal."¹ AR, Tab 14-0, Initial Selection Decision, at 2.

The Army's final evaluation of the offerors' proposals was as follows:

	ALSALAM	DYNCORP
PAST PERFORMANCE	LOW RISK	LOW RISK
TECHNICAL	ACCEPTABLE	ABOVE AVERAGE
Technical Performance	Acceptable	Outstanding
Management	Acceptable	Above Average
Transition	Marginal	Above Average
PRICE	\$76,264,855	\$64,841,937

¹ For the past performance factor, the agency used an evaluation scheme of low, moderate, high, and unknown risk; for the technical factor, the agency used an scheme of outstanding, above average, acceptable, marginal, susceptible to being made acceptable, and unacceptable. AR, Tab 4.0, Source Selection Plan, at 20-21.

AR, Tab 14-0, Initial Selection Decision, at 2.

The Army selected DynCorp for award on April 9, 2009, based on its higher technical rating and lower price. *Id.* at 5. The agency provided Alsalam a debriefing on April 16.

Alsalam filed a protest challenging the award to DynCorp on April 21. As relevant here, Alsalam's initial protest argued that the agency's evaluation of DynCorp's transition plan was unreasonable in light of the solicitation's guidance about the necessary lead-time for non-Saudi companies to obtain igamas for its workers. The protester also argued that the agency had not reasonably evaluated DynCorp's proposed costs for certain cost-reimbursement CLINs.

On July 6, the Government Accountability Office (GAO) attorney assigned to the protest conducted "outcome prediction" alternative dispute resolution (ADR), during which he stated that he viewed it likely that Alsalam's protest would be sustained.² As relevant here, the GAO attorney advised that the Army's evaluation of DynCorp's transition plan did not reconcile the favorable rating under the transition subfactor with the solicitation's guidance that a company not currently registered in Saudi Arabia would require 6-8 months to become registered and obtain igamas. The GAO attorney also advised that he had concerns regarding the agency's cost realism evaluation of three cost-reimbursement CLINs: No. X004AA (DMA salaries), No. X004AB (DMA bonuses), and No. X006AA (maintenance support services temporary duty and DMA vacation airfare).³ In this regard, the GAO attorney explained that the agency's reliance on Defense Contract Audit Agency (DCAA) reports as evidence that DynCorp's proposal contained all required cost elements and that DynCorp's proposed costs were realistic, appeared unreasonable because those reports did not address the realism of the costs for those CLINs.

On July 7, the agency advised our Office that it would take corrective action by reevaluating both proposals under the transition plan technical subfactor, and reevaluating DynCorp's cost proposals with regard to the three cost-reimbursement CLINs. On July 8, we dismissed the protest as academic based on the agency's notice of corrective action.⁴

² In outcome prediction ADR, the GAO attorney handling the case convenes all of the participating parties and advises them of what he or she believes the likely outcome would be if a decision on the merits were written, and the reasons for that belief.

³ The "X" designation indicates a total cost for the two base and 3 option years for each of the CLINs.

⁴ We issued a decision granting Alsalam's request for a recommendation that it be reimbursed its protest costs associated with its earlier protest. Alsalam Aircraft Co.--Costs, B-401298.3, Nov. 5, 2009, 2009 CPD ¶ 208.

As part of its reevaluation of the offerors' transition plans, the Army consulted U.S. government subject-matter experts from the following offices: the U.S. Military Training Mission in Saudi Arabia, the Office of the Program Manager (OPM) for the Saudi Arabian National Guard (SANG)⁵, and the Defense Contract Management Agency office for Saudi Arabia. Agency Report (AR) at 7-8. These resources advised that, contrary to the views expressed in the solicitation, it was possible for a company to become registered to do business in Saudi Arabia, and to obtain igamas, within the 60-day transition period. Based on these comments, the Army concluded that DynCorp's proposed transition could be achieved within the time required by the RFP. The Army also prepared a new cost evaluation, which concluded that DynCorp's proposed costs were complete and realistic.

The Army made no changes to either offeror's evaluation ratings or evaluated costs. The agency reaffirmed the award to DynCorp on September 23, and this protest followed.

DISCUSSION

Alsalam raises two primary arguments: (1) the Army unreasonably evaluated DynCorp's proposal under the transition subfactor of the technical evaluation factor, or, alternatively, the Army failed to allow offerors an opportunity to submit revised proposals in response to the agency's changed understanding of that subfactor; and (2) the agency unreasonably evaluated DynCorp's cost proposal. For the reasons discussed below, we deny the protest.

Transition Evaluation

First, Alsalam argues that the Army unreasonably found that DynCorp's proposed transition plan was technically acceptable, given the guidance about the time a company, such as DynCorp, would need to become registered to do business in Saudi Arabia. We disagree.

As discussed above, the RFP required offerors to propose a 60-day phase-in transition, wherein the contractor would be required to, among other things, obtain or renew igamas for the DMAs.⁶ That said, the solicitation also explained that, "[p]ast experience from new contractors that are not now established with the In-Kingdom Labor Department to obtain work visas (Igamas) indicates it takes a very

⁵ OPM SANG is a U.S. Army office that advises the SANG.

⁶ The RFP required offerors to provide a "detailed transition plan with milestones," and stated that the agency would evaluate the "ability of the offeror to provide high quality transition, teaming and subcontracting in accordance with the SOW." RFP §§ L.2.2.4, § M-4.2.0.

long period of time to get established—up to 6 to 8 months.” RFP attach. 14, Q&A No. 44.

DynCorp’s proposal stated that it would conduct the required phase-in transition within 60 days. AR, Tab 17.2.2, DynCorp Proposal, Vol. II, at 111. The awardee’s transition plan also contained schedule milestones, which included, as relevant here: (1) establishing a business office in Riyadh, Saudi Arabia, within [deleted] days; (2) establishing ability to obtain igamas “through valid registration of company” in Saudi Arabia within [deleted] day; and (3) processing the paperwork to “transfer certification, visas, and employment forms from incumbent contractor to DynCorp International of employees” within [deleted] days. Id. at 111-114.

The Army’s initial evaluation found that DynCorp’s transition would be successful, based on the detailed milestone schedule, and also because the agency assumed that both the incumbent contractor, under its existing contractual obligations, and the Saudi government, would cooperate with the awardee to ensure a successful transition. AR, Tab 7.2.1, DynCorp Technical Evaluation, at 14. As discussed above, the GAO attorney assigned to the initial protest expressed concern during the outcome prediction ADR that the agency had not reconciled its view of DynCorp’s transition plan with its stated assumptions about the amount of time it would take for a company to become registered to do business in Saudi Arabia and obtain igamas.

During the reevaluation, the Army sought and received responses from U.S. government subject-matter experts regarding the time needed for business registration activities in Saudi Arabia. See AR, Tab 24.1, Email Correspondence, July 7, 2009-Sept. 22, 2009; Tab 26.1, DynCorp Revised Technical Evaluation, at 1. The Army was advised by these subject-matter experts that a company would be able to obtain business registration through Saudi government sponsorship within approximately 2 weeks, and that upon registration, the company would be able to obtain the required igamas.⁷ AR, Tab 26.1, DynCorp Revised Technical Evaluation, at 1. The agency was also advised by the subject-matter experts that it was realistic to assume that DynCorp could, within 60 days, achieve its plan of transferring igamas for the DMAs that would be retained from the incumbent contract, and obtain new igamas for the new DMAs. Id.

⁷ Alsalam notes that the agency appeared to conclude that DynCorp’s transition plan was acceptable prior to receiving all of the information from the government sources. We think that the record shows that initial responses from the sources indicated that a 60-day transition was feasible for a company not already registered to do business in Saudi Arabia, and that subsequent correspondence confirmed this information. See AR, Tab 24.1, Email Correspondence, July 7, 2009-Sept. 22, 2009; Tab 26.1, DynCorp Revised Technical Evaluation, at 1.

Given the information received during the reevaluation, the agency concluded that the guidance in the solicitation about the amount of time needed to register and obtain igamas was incorrect, and therefore provided no basis to question DynCorp's proposed transition approach or change its rating for that subfactor. *Id.* at 2. We think that the Army reasonably relied on the information provided by the subject-matter experts, and for this reason, conclude that the agency's reevaluation of DynCorp's proposed transition was reasonable.

Alsalam also argues that even if the Army's evaluation was reasonable, the agency should have revised the solicitation's guidance and reopened the competition to allow Alsalam to submit a new proposal based on the agency's changed understanding of the transition requirements. We disagree, because we do not think that the protester was prejudiced by the agency's actions. Our Office will sustain a protest that an agency improperly changed or relaxed its requirements for the awardee only where the protester establishes a reasonable possibility that it was prejudiced by the agency's actions; that is, had the protester known of the changed or relaxed requirements, it would have altered its proposal to its competitive advantage. *Datastream Sys., Inc.*, B-291653, Jan. 24, 2003, 2003 CPD ¶ 30 at 6.

While we think that an offeror could have been prejudiced by this change, we do not think that the record shows that Alsalam was prejudiced. In this regard, Alsalam's proposal stated that, because it was the incumbent contractor, "the transition will have little or no impact due to fact that all resources and experienced personnel are currently in place." AR, Tab 16.2, Alsalam Proposal, Vol. II, at 41. More significantly, Alsalam did not propose any costs for its phase-in transition effort. AR, Tab 16.3, Alsalam Proposal, Vol. III, CLIN 0012AA. On this record, we do not think that there is any likelihood that Alsalam would have submitted a different proposal in response to a relaxed understanding of these requirements.⁸

Cost Realism Evaluation

Next, Alsalam argues that the Army failed to reasonably evaluate DynCorp's cost proposal, either as part of the agency's initial evaluation, or its reevaluation. We agree with the protester that the record here does not sufficiently establish that the agency reasonably evaluated DynCorp's proposed costs. However, as discussed

⁸ For the record, DynCorp acknowledges in its comments on the Agency Report that it experienced difficulties in becoming registered, and will seek to partner with a Saudi company to ensure that its transition is successful. DynCorp Supp. Comments on AR, Dec. 4, 2009, at 2. This information was not known to the agency at the time of award, and therefore provides no basis to question the agency's decision at the time it was made; moreover, any noncompliance with the transition requirements are a matter of contract administration that our Office does not review. See *United Seguranca, Ltda.*, B- 294388, Oct. 21, 2004, 2004 CPD ¶ 207, at 4.

below, we again think, on this record, that there was no prejudice to Alsalam, because we see no reasonable possibility that correcting the alleged errors would make Alsalam the low-cost offeror.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1); 15.404-1(d); Palmetto GBA, LLC, B-298962, B-298962.2, Jan. 16, 2007, 2007 CPD ¶ 25 at 7. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1). We review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and not arbitrary. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9.

Alsalam primarily argues that, despite the agency's reevaluation, the record does not show whether the agency reasonably evaluated DynCorp's proposed costs for DMA salaries under CLIN X004AA.⁹ Specifically, the protester contends that the awardee's proposal does not show whether the costs for CLIN X004AA included certain fringe benefit cost elements required by the solicitation, such as the Saudi insurance known as General Organization for Social Insurance, Defense Base Act insurance, and hardship and housing allowances. See RFP attach. 2, at 4-6. The protester argues that since these costs are not identified in the awardee's proposal, they may not have been included in its costs for this CLIN. Alsalam notes that DCAA report on its cost proposal concluded that, for Alsalam, these costs represented approximately \$[deleted]—indicating the potential cost effect on DynCorp's costs. AR, Tab 5.1, DCAA Alsalam Evaluation, at 11.

As part of its reevaluation, the Army prepared a new cost evaluation document. This document primarily reiterates the agency's position that the initial evaluation reasonably found that the awardee's proposed costs for CLIN X004AA contained all of the required cost elements. See AR, Tab 25.2/25.3, Addendum to Final Cost/Price Analysis, at 1. The Army contends that the DCAA reports cited in the initial evaluations also confirm that DynCorp's costs for this CLIN contained the cost elements at issue, and that the Army cost evaluation also verified that the cost elements were included. Price Analyst Response to GAO Questions, Dec. 14, 2009,

⁹ Although Alsalam also argues that the record does not show that the agency reasonably evaluated the realism of DynCorp's proposed costs for CLINs X004AB and X006AA, the protester does not explain what parts of the awardee's costs were unrealistic, other than the fact that they were lower than Alsalam's. The difference between the offerors' proposed costs for these CLINs was approximately \$[deleted] million. See AR, Tab 6.3, Alsalam Cost Evaluation, at 5; Tab 7.3, DynCorp Cost Evaluation, at 3.

at 1. The agency argues that the difference between the offerors' costs for this CLIN is due to differences between their profit and general and administrative (G&A) rates. AR, Tab 25.2/25.3, Addendum to Final Cost/Price Analysis, at 1. As discussed above, offerors were required to propose fixed and cost reimbursement CLINS. For CLIN X004AA, the base DMA salaries were established by the solicitation. RFP at 17; attach. 2 at 4-6. Thus, proposed costs should have primarily reflected differences between offerors' profit, indirect rates, and fringe benefit costs.

While it appears possible that the majority of the cost difference between the offerors for this CLIN is explained by the differences between the offerors' profit and G&A rates¹⁰, the record does not clearly show how or whether the agency reached this conclusion. In this regard, the agency's reevaluation document provides only summary and conclusory remarks regarding whether DynCorp's proposed cost for CLIN X004AA included all of the required cost elements. Although the reevaluation again states that the DCAA report concluded that the cost elements were included in DynCorp's proposal for this CLIN, the DCAA report does not mention the disputed cost elements. Compare Price Analyst Response to GAO Questions, Dec. 14, 2009, at 1, with AR, Tab 5.2, DCAA Report for DynCorp, Jan. 15, 2009. Moreover, despite requests by our Office for specific citations to the record, the Army has not shown that DynCorp's proposal included the disputed cost elements or that the agency evaluated those costs.¹¹

Notwithstanding these concerns, we think that, based on the record, there is no possibility of prejudice to Alsalam here because even if DynCorp failed to include the fringe benefit costs, a cost realism adjustment would not overcome the awardee's \$11.4 million advantage over the protester's overall price.¹² Specifically,

¹⁰ The record shows that the differences between the offerors' proposed costs for CLIN X004AA could be largely explained by the differences in profit and indirect rates. For the overall CLIN cost, DynCorp was \$[deleted] lower than Alsalam. AR, Tab 6.3, Alsalam Cost Evaluation, at 5; Tab 7.3, DynCorp Cost Evaluation, at 3. The offerors' base labor costs, which should include the disputed cost elements, differed by approximately \$[deleted]: \$[deleted] for Alsalam, \$[deleted] for DynCorp. Id. DynCorp proposed a profit rate of [deleted]% for the base period, and a [deleted]% rate for the option periods, with a G&A rate ranging from [deleted]% to [deleted]%. In contrast, Alsalam proposed a profit rate of [deleted]%, with a G&A rate ranging from [deleted]% to [deleted]%. Id. Thus, differences between the offeror's profit and G&A rates accounted for approximately \$[deleted] of the \$[deleted] difference.

¹¹ In its comments, DynCorp identifies areas in its proposal where it claims these items can be found, although they are not so labeled. As discussed above, however, it is not clear from the record that the Army understood whether DynCorp in fact included these items in its proposal.

¹² As discussed above, the RFP stated that award would be made based on "price," despite containing both fixed-price and cost-reimbursement CLINs.

the protester's estimate of the required cost realism adjustments--\$[deleted] for CLIN X004AA and \$[deleted] under CLINs X004AB and X006AA--would not make Alsalam the lower-priced offeror. Because DynCorp's proposal would remain higher-rated technically, and lower priced, we think that there is no reasonably possibility of prejudice to Alsalam.¹³

The protest is denied.

Lynn H. Gibson
Acting General Counsel

¹³ Alsalam also argues that the agency failed to reasonably consider negative information concerning DynCorp's financial controls, as indicated in DCAA reports issued after the initial award. We agree that the record here is not entirely clear as to how the agency considered cost risk arising from these reports. However, the cost reevaluation notes that DCAA considered DynCorp a "high risk," and the risks are clearly set forth in the agency's evaluation document, which, we think, shows that they were considered by the agency. See AR, Tab 25.2/25.3, Addendum to Final Cost/Price Analysis, at 2-4.